

**KENTUCKY PERSONNEL BOARD
MINUTES OF APRIL 15, 2016**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Vice Chairman Larry Gillis on April 15, 2016, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Larry B. Gillis, Vice Chairman
David B. Stevens, Member
David F. Hutcheson, Jr., Member
Amanda Cloyd, Member
Brian J. Crall, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Cynthia Perkins, Administrative Section Supervisor
Gwendolyn McDonald, Administrative Specialist

Board Personnel Absent:

Tommy W. Chandler, Member
D. Brian Richmond, Member

Swearing in of newly elected Board members

The first order of business was to swear in the newest Board Member, Brian J. Crall, who was appointed by Governor Matthew G. Bevin. The oath of office was administered by Boyce A. Crocker, General Counsel.

2. **READING OF THE MINUTES OF REGULAR MEETING HELD MARCH 11, 2016**

The minutes of the last Board meeting had been previously circulated among the members. Chair Gillis asked for additions or corrections. Ms. Cloyd moved to approve the minutes, as submitted. Mr. Hutcheson seconded and the motion carried 4-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek welcomed Mr. Crall to the Personnel Board.

Mr. Sipek stated that the Board members received a copy of the Franklin Circuit Court's Order granting the Personnel Board's Motion to Dismiss the appeal of *Justice and Public Safety Cabinet, Department of Corrections v. Chad Knight and Kentucky Personnel Board*, Appeal No. 2016-CI-0044.

The annual Kentucky Association of Administrative Adjudicators (KAAA) Training is scheduled for April 29, 2016. Mr. Sipek stated that he, Mr. Crocker, and several hearing officers will be attending this training. Mr. Sipek said that Ms. Linda House, of the Kentucky Employee Mediation Program (KEMP), will be a presenter.

At the conclusion of Mr. Sipek's report, Chair Gillis called for the Personnel Cabinet's report.

4. PERSONNEL CABINET'S REPORT

Secretary Thomas Stephens and the Hon. Lesley Bilby came forward to present the Personnel Cabinet's report.

Mr. Stephens stated that in light of the media coverage on the former Personnel Cabinet Secretary, Tim Longmeyer, he would like to invite the members of the Personnel Board to meet the senior staff at the Personnel Cabinet. Mr. Stephens stated that changes have been made at the Cabinet to become more transparent. This meeting will likely occur sometime in the coming summer and will be coordinated with Mr. Sipek.

Ms. Bilby stated that HumanaVitality is having a Border Battle Step Challenge with the State of Indiana. Sign-up begins April 15, 2016. She also mentioned that the Living Well Promise needs to be completed by May 1, 2016.

Mr. Stephens thanked Mr. Sipek for getting the Petitioned Position on the Board's Agenda and approves the requested position. Chair Gillis called for the representative of the Cabinet for Health and Family Services to come forward for the petitioned position. Chair Gillis stated that he would recuse from discussion as he was instrumental in putting this together.

Petitioned Position – Cabinet for Health and Family Services
Deputy Executive Director
Office of Administrative Technology Services (OATS)

Present was Executive Director Bernard "Deck" Decker. Mr. Decker stated that the Deputy Executive Director position is requested to oversee the Agency's facilities, purchasing, accounting and auditing functions.

Ms. Cloyd moved to approve the Deputy Executive Director position, for the Office of Administrative Technology Services (OATS). Mr. Hutcheson seconded and the motion carried 3-0, with Chair Gillis recusing.

[Dr. Stephens arrived at the Board meeting at approximately 9:55 a.m.]

5. ORAL ARGUMENTS

A. James Cheatham v. Transportation

Present for oral arguments were counsel for Appellant, the Hon. Elmer George, and counsel for Appellee, the Hon. William Fogle. After presenting oral arguments, the parties answered questions from the Board.

B. William C. Lawson v. Finance and Administration Cabinet

Present for oral arguments were counsel for Appellant, the Hon. Paul Fauri, and counsel for Appellee, the Hon. Cary Bishop. After presenting oral arguments, the parties answered questions from the Board.

C. Estate of William McClelland v. Justice and Public Safety Cabinet/ State Police

Present for oral arguments were Ms. Annette McClelland, Administrator of the Appellant's estate, and counsel for Appellee, the Hon. Matthew J. Johnson. After presenting oral arguments, the parties answered questions from the Board.

6. MOTIONS

A. Kenneth Heiskell v. Finance (2015-302 & 2015-303) (2 appeals)

-- Motion for Entry of Dismissal

--Response to Motion for Entry of Dismissal

B. Patricia Miller v. Finance (2015-351 & 2016-14) (2 appeals)

--Notice of Appearance and Motion for Entry of Dismissal

--Response to Motion for Entry of Dismissal

Mr. Sipek advised that these appeals were filed in circuit court; therefore, the Appellants are asking that these appeals be dismissed.

Mr. Hutcheson moved to accept the withdrawals of the Appellants, Kenneth Heiskell and Patricia Miller. Ms. Cloyd seconded and the motion carried 5-0.

7. CLOSED SESSION

Dr. Stevens moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Mr. Crall seconded. Chair Gillis stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 5-0. (10:50 a.m.)

Dr. Stevens moved to return to open session. Ms. Cloyd seconded and the motion carried 5-0. (12:30 p.m.)

8. CASES TO BE DECIDED

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. James Cheatham v. Transportation (2015-112)

Ms. Cloyd, having noted Appellant's exceptions, Appellee's response and oral arguments, moved to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 5-0.

B. William C. Lawson v. Finance and Administration Cabinet (2014-185)

Ms. Cloyd, having noted Appellant's exceptions, Appellee's response and oral arguments, moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 5-0.

**C. Estate of William McClelland v. Justice and Public Safety Cabinet/
Kentucky State Police (2013-154)**

Mr. Hutcheson, having noted Appellee's exceptions and oral arguments, moved to accept the recommended order sustaining the appeal. Dr. Stevens seconded and the motion carried 4-0, with Ms. Cloyd recusing.

D. Ellenore Callan v. Cabinet for Health and Family Services (2015-082)
Deferred from March Board

Ms. Cloyd, having noted Appellee's exceptions and Appellant's response, moved to accept the Final Order altering the recommended order, as attached to the minutes, sustaining the appeal to the extent therein. Dr. Stevens seconded and the motion carried 5-0.

E. Angelica F. Dailey v. Justice and Public Safety Cabinet/Corrections
(2014-321) (On Remand) Deferred from March Board

Mr. Hutcheson, having noted Appellee's exceptions, Appellant's response and oral arguments, moved to accept the Final Order altering the recommended order, as attached to the minutes, dismissing the appeal. Dr. Stevens seconded and the motion carried 5-0.

F. Lee Coleman (2015-168), Jeffrey Dotson (2015-169),
Phil Justice (2015-170) & Kyle Kessler (2015-171) v. Transportation
(4 appeals)

Ms. Cloyd moved to accept the recommended order dismissing the appeals. Dr. Stevens seconded and the motion carried 5-0.

G. Jennifer Combs v. Cabinet for Health and Family Services (2015-273)

Mr. Hutcheson, having noted Appellee's exceptions and Appellant's response, moved to accept the recommended order sustaining the appeal. Ms. Cloyd seconded and the motion carried 5-0.

H. ~~Joseph Osborne v. Justice and Public Safety Cabinet/Corrections (2015-060)~~
~~(Dismissal, Military Leave during Probationary Period - Sustained)~~
~~—Appellee's Exceptions~~
Moved to Settlements

I. Beverly M. Robinson v. Transportation Cabinet and Personnel Cabinet
(2015-213)

Ms. Cloyd moved to accept the recommended order dismissing the appeals. Mr. Crall seconded and the motion carried 5-0.

J. Kendrah Sanders v. Justice and Public Safety Cabinet/Corrections
(2016-007)

Mr. Hutcheson, having noted Appellant's exceptions and addendum to exceptions, moved to accept the recommended order dismissing the appeals. Ms. Cloyd seconded and the motion carried 5-0.

K. Dawn M. Wilkerson v. Justice and Public Safety Cabinet/Juvenile Justice (2014-197)

Mr. Hutcheson, having noted Appellee's exceptions and Appellant's response, moved to defer this matter to the next Board meeting. Ms. Cloyd seconded and the motion carried 5-0.

L. Stanley Wolfe v. Energy and Environment Cabinet (2015-184)
(Suspension – Sustained to the Extent)

Mr. Hutcheson, having noted Appellee's exceptions and oral arguments, moved to accept the recommended order sustaining the appeal to the extent therein. Dr. Stevens seconded and the motion carried 4-0, with Chair Gillis recusing.

M. Maureen Baird v. Transportation Cabinet and Personnel Cabinet (2015-260)

Mr. Hutcheson moved to accept the recommended order dismissing the appeal. Ms. Cloyd seconded and the motion carried 5-0.

N. Johnny L. Ware v. Cabinet for Health and Family Services (2014-316)
(On Remand)

Mr. Hutcheson moved to accept the recommended order sustaining the appeal. Ms. Cloyd seconded and the motion carried 5-0.

Show Cause Orders – No Response Filed – Appeals Dismissed

Mr. Crall moved to find that the Appellants had not responded to the show cause orders and that the recommended orders be accepted dismissing the appeals for failure to timely prosecute the appeals. Mr. Hutcheson seconded and the motion carried 5-0.

O. William Dawson v. Cabinet for Health and Family Services (2015-333)

P. Joseph Slucher v. Transportation & Personnel (2015-330)

8. WITHDRAWALS

Mr. Hutcheson moved to accept the following withdrawal of appeals *en bloc* and to dismiss the appeals. Dr. Stevens seconded and the motion carried 5-0.

A. Jack Hughes v. Transportation Cabinet (2014-290)

B. David Hunt v. Justice and Public Safety Cabinet/Corrections (2016-034)

C. Dovie Kelly v. Justice and Public Safety Cabinet/Corrections (2014-315)

D. Keenan Muncie v. Transportation Cabinet (2014-291)

E. Christopher Pollett v. Transportation Cabinet & Personnel Cabinet (2015-347)

F. James Patrick Stipes v. Tourism, Arts & Heritage Cabinet (2014-061)

- G. Sherri Troutman v. Justice and Public Safety Cabinet & Personnel Cabinet
(2016-061)

9. **SETTLEMENTS**

Dr. Stevens moved to issue settlement orders and to sustain the appeals *en bloc* to the extent set forth in the settlements as submitted by the parties. Ms. Cloyd seconded and the motion carried 5-0.


- A. Michael Borchers v. Education and Workforce Development Cabinet (2015-295)
- B. Lisa Carraro v. Cabinet for Health and Family Services (2014-068)
- C. Sherry Shields v. Veterans Affairs (2015-349)
- D. Andrea Yearego v. Cabinet for Health and Family Services (2015-280)
- E. Melissa Pittman v. Transportation Cabinet (2016-028) (Mediation)
- F. Joseph Puckett v. Transportation Cabinet (2016-046) (Mediation)
- G. Joseph Osborne v. Justice and Public Safety Cabinet/Corrections (2015-060)
- H. Chad E. Campbell v. Tourism, Arts and Heritage Cabinet/Parks (2015-297)

10. **OTHER**

There being no further business, Mr. Hutcheson moved to adjourn. Ms. Cloyd seconded and the motion carried 5-0. (12:35 p.m.)



Larry Gillis, Vice Chairman



David B. Stevens, Member

David F. Hutcheson, Member



Amanda Cloyd, Member



Brian J. Crall, Member

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2015-082**

ELLENORE CALLAN

APPELLANT

**FINAL ORDER
ALTERING HEARING OFFICER'S
VS. FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

** ** ** ** **

The Board at its regular April 2016 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated January 28, 2016, having noted Appellee's exceptions, Appellant's response to exceptions and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be altered, as follows:

A. **Delete** Finding of Fact number 8 and substitute the following:

8. The Board finds Appellant presented insufficient evidence so as to allow a finding supporting the Appellant's claim of retaliation as it regards the issuance of the two written reprimands.

B. **Delete** the Recommended Order, and substitute the following:

IT IS HEREBY ORDERED that the appeal of **ELLENORE CALLAN V. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2015-082)** is **SUSTAINED** to the extent that the 2014 year-end evaluation be removed from Appellant's personnel files and any supporting documentation likewise be removed from her personnel files, and for Appellant

to receive any and all other relief which may be appropriate. If the written reprimands, and any responses thereto are otherwise in Appellant's personnel file, they may remain. The Board orders Appellee shall reimburse the Appellant for any leave time she used attending the evidentiary hearing and any pre-hearing conferences at the Personnel Board pursuant to KRS 18A.095(25), and to otherwise make Appellant whole. The Board specifically finds that the written reprimands should remain in Appellant's personnel files. KRS 18A.105 and 200 KAR 12:030.

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer, as Altered, be, and they hereby are, approved, adopted and incorporated herein by reference as a part of this Order and the Appellant's appeal is **SUSTAINED to the extent herein.**

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 20th day of April, 2016.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day mailed to:

Hon. Kathleen Hines
Hon. Michael Callan
Jay Klein

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-321**

ANGELICA F. DAILEY

APPELLANT

**FINAL ORDER
ALTERING HEARING OFFICER'S
VS. FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER UPON REMAND**

**JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS**

APPELLEE

** ** ** ** **

The Board, at its regular April 2016 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order Upon Remand of the Hearing Officer dated February 12, 2016, having noted Appellee's exceptions, Appellant's response to exceptions, oral arguments of the parties, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order Upon Remand of the Hearing Officer be altered, as follows:

A. **Delete** Finding of Fact number 14 and substitute the following:

14. On November 13, 2014, seven days after Appellant's Workers' Compensation filing, Ms. Taylor obtained from the Appellant information relative to the class during which the injury occurred, specifically, who taught the class and the type of demonstrations occurring. She also inquired of Appellant whether she told coworkers that she was quitting her job (Appellee's Exhibit 1).

B. **Delete** Finding of Fact number 22 and substitute the following:

22. Warden Haney testified Appellant was terminated because she failed to disclose a relationship with an inmate. Warden Haney testified this decision had nothing to do with Appellant's Workers' Compensation claim.

C. **Delete** Finding of Fact number 23 and 24, and substitute the following:

23. Warden Haney testified that after directing Ms. Taylor and Deputy Warden Harm to investigate Appellant's absence from training, he advised them to keep him posted and met with them informally several times over the next few days. Warden Haney admitted to being told of Appellant's Workers' Compensation filing, but does not recall when he became aware of it.

24. The Board finds Warden Haney's testimony credible that he fired Appellant for not having reported a relationship with an inmate.

D. **Delete** Finding of Fact numbers 35, 36 and 37, and substitute the following:

35. The Board finds Warden Haney's testimony credible that he fired Appellant for not having reported a relationship with an inmate. The Board finds the Appellant failed to prove this reason was pretext. The Board finds the Appellant was not fired in retaliation for filing a Workers' Compensation claim.

E. **Delete** Conclusions of Law numbers 7, 8 and 9, and substitute the following:

7. The Board rejects the Hearing Officer's Findings and Conclusions that Warden Haney's stated reason for terminating the Appellant (that she did not disclose a relationship with an inmate) was pretext. While the Board does accept and adopt the Hearing Officer's Conclusions of Law as stated above in numbers 4

and 5 regarding the test to be applied, the Board concludes that the analysis should not stop there. Though raised in an age discrimination case, the Board cites the previous Personnel Board Appeal of *Wilding v. Corrections, et al.*, Appeal No. 2011-228, (2013 WL 5406243) (KY PB). In that case the Hearing Officer noted, "The Sixth Circuit has adopted an 'honest belief rule.' The employer has an honest belief in its stated non-discriminatory reason, the employee cannot establish the reason was pretextual simply because it is ultimately shown to be incorrect." *Wilding*, citing *Majewski v. Automatic Data Processing Inc.*, 274 F.3d 1106, 1117 (6th Cir. 2001) and *Smith v. Chrysler Corp.*, 155 F.3d 799, 806, 807 (6th Cir. 1998). There, as here, the Appellee had an honest belief in its reason for terminating Appellant Dailey because the Appellee, as found by the Board regarding Warden Haney's testimony, reasonably relied on the particularized facts that were before it at the time the decision was made, that is, that the Appellant had not reported a relationship with an inmate.

8. The Board further concludes that though some of the additional reasons for dismissal relied on by Warden Haney were shown to be mistaken, there was never a showing that Warden Haney's belief that Appellant had a relationship with an inmate and had not reported it was shown to either be mistaken or not held honestly. The Board concludes that Warden Haney's belief in that regard was not pretextual, and thus, the Board concludes that the Appellee's termination of Appellant Angelica Dailey was not in retaliation or for discriminatory reasons for Appellant having filed a Workers' Compensation claim.

F. Delete the Recommended Order on Remand, and substitute the following:

IT IS HEREBY ORDERED that the appeal of **ANGELICA F. DAILEY V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2014-321)** be **DISMISSED**.

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law, and Recommended Order Upon Remand of the Hearing Officer, as Altered, be, and they hereby are, approved, adopted and incorporated herein by reference as a part of this Order and the Appellant's appeal is, therefore, **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 20th day of April, 2016.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day mailed to:

Hon. Stafford Easterling
Hon. L. Dustin Riddle
Mr. Rodney E. Moore